

2007 DRAFTING REQUEST

Bill

Received: **11/30/2006**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **James Kreuser (608) 266-5504**

By/Representing: **Lisa Lundquist**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Elections - campaign finance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kreuser@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Public financing of elections for justice

Instructions:

Per 05 AB-1212, but limit only to public financing of elections for justice.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 03/10/2007	kfollett 03/14/2007		_____			State Crime
/1			pgreensl 03/15/2007	_____	lparisi 03/15/2007	lparisi 03/19/2007	

FE Sent For: **03/15/2007.**

 **<END>**

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03-15-2007
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See
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DN 018

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1/2/11	jkuesel 3/10/07	1/1/07 3/14	3/15 PS	3/15/07 PS			

FE Sent For:

<END>

PWF

D NOTE

2007

2005 - 2006 LEGISLATURE

Fri 3/16 or 3/15

-0970/1

LRB-4240/4

JTK:kjfk/ink/pg

2005 ASSEMBLY BILL 1212

Identical -
Do this
one first
Thanks

May 2, 2006 - Introduced by Representative FREESE, cosponsored by Senator ERPENBACH. Referred to Committee on Campaigns and Elections.

(regenerate)

1 AN ACT ~~to repeal~~ 11.50 (3) (a) 2.; ~~to amend~~ 8.35 (4) (b), 11.12 (2), 11.16 (2), 11.16
2 (3), 11.26 (1) (a), 11.26 (2) (a), 11.26 (9) (a), 11.26 (9) (b), 11.26 (13), 11.31 (1) (d),
3 11.50 (1) (a) 1. and 11.50 (3) (b); and ~~to create~~ 11.01 (14m), 11.24 (4m), 11.26
4 (1) (am), 11.26 (2) (an), 11.26 (9) (ba), 11.501 to 11.522, 19.45 (8) (d), 19.45 (8m),
5 20.510 (1) (r), 20.585 (1) (q), 20.585 (1) (r), 20.855 (4) (bb), 25.17 (1) (cm) and
6 25.421 of the statutes; **relating to:** public financing of campaigns for the office
7 of justice of the supreme court, ~~fund raising during state budget consideration,~~
8 ~~representation by former state officials, service by former legislators or~~
9 ~~legislative employees as lobbyists,~~ making appropriations, and providing
10 penalties.

Analysis by the Legislative Reference Bureau

This bill makes various changes in state laws relating to public financing of campaigns for the office of justice of the supreme court, fund raising during state budget consideration, representation by former state officials, and service by former legislators or legislative employees as lobbyists.

ASSEMBLY BILL 1212

*including justice of the
supreme court)****Public financing of campaigns for justice of the supreme court***

This bill makes numerous changes in the campaign finance law affecting campaigns for the office of justice of the supreme court. The bill limits the application of the Wisconsin election campaign fund, under which eligible candidates for state offices ~~except district attorney, court of appeals judge, and circuit judge~~ may receive public grants from state general purpose revenues derived from designations made by individuals filing state income tax returns, to state offices other than the office of justice of the supreme court. To finance elections for the office of justice of the supreme court, the bill creates a democracy trust fund, under which eligible candidates for this office may receive public grants derived from general purpose revenues.

Under the bill, a candidate for the office of justice of the supreme court may qualify for public financing from the democracy trust fund to finance a campaign in a primary or election by receiving qualifying contributions of at least \$5 but not more than \$100 each made by ~~electors of the state~~ *an elector of this* in an aggregate amount of at least \$5,000 but not more than \$15,000. A candidate who accepts public financing may also accept "seed money" contributions in amounts of \$100 or less, subject to aggregate limitations, and may contribute personal funds in specified amounts during specified periods. In order to qualify for a public financing benefit for the primary, a candidate at the primary must have an opponent who qualifies to have his or her name appear on the ballot at the primary, and in order to qualify for a public financing benefit for the spring election, a candidate at the election must have an opponent who qualifies to have his or her name appear on the ballot at the election. A candidate who accepts public financing may not accept any contributions other than qualifying and seed money contributions and contributions from personal funds within the limitations permitted. Public financing benefits for eligible candidates are \$100,000 in the ~~primary election~~ *spring* and \$300,000 in the spring election. The benefits are subject to a biennial cost of living adjustment. A candidate who accepts more than a specified amount of qualifying or seed money contributions has the excess deducted from his or her public financing benefit. In addition, if a candidate's opponent declines to accept public financing and makes expenditures in a total amount that exceeds by more than 5 percent the amount permitted for a candidate who accepts public financing, the candidate who accepts public financing receives additional funding equivalent to the excess expenditures made by his or her opponent, but not more than three times the amount of the public financing benefit for the office that the candidate seeks. A candidate also receives additional public financing equivalent to any independent expenditures made against the candidate or in support of his or her opponents if those expenditures exceed 20 percent of the amount of the public financing benefit for the office that the candidate seeks (but not more than three times the amount of that benefit).

Currently, a candidate for the office of justice of the supreme court may qualify to receive a grant from the Wisconsin election campaign fund for use in an election campaign only (no funding is provided for primary campaigns). In order to qualify for a grant, a candidate must qualify to have his or her name appear on the spring election ballot and must have an opponent who qualifies to have his or her name

ASSEMBLY BILL 1212

appear on that ballot. The maximum amount of a grant that a candidate may receive is \$97,031. This amount is not subject to any cost of living adjustment. In addition, this amount is reduced by the total amount of contributions received by a candidate from special interest committees and this amount may not be fully funded in a particular year if there are not sufficient moneys in the Wisconsin election campaign fund to provide full financing for all qualifying candidates. A candidate must agree to abide by spending and self-contribution limits in order to receive a grant, but this agreement does not apply if the candidate has an opponent who could have qualified for a grant but declines to do so and declines to file an affidavit of voluntary compliance with spending and self-contribution limits.

Currently, individuals and committees making political contributions to candidates for the office of justice of the supreme court are subject to limitations on the amount or value of any contribution or contributions that may be made cumulatively to any candidate in a campaign. The limitations are \$10,000 in the case of an individual making a contribution to a candidate and \$8,625 in the case of a committee making a contribution to a candidate. This bill replaces these limitations with a contribution limitation of \$1,000 applicable to an individual or committee making any contribution or contributions cumulatively to any candidate for the office of justice of the supreme court who is eligible to qualify for a public financing benefit but who declines to accept one ~~per campaign~~.

during
a
campaign
period

Fundraising during state budget consideration

This bill prohibits any person from making a contribution to an incumbent partisan state official or a candidate for a partisan state office during the period from the date of introduction of the executive budget bill through the date of enactment of the biennial budget act. The prohibition does not apply to an individual who is a candidate for a partisan state office at a special election during the period beginning on the date that the special election is ordered and ending on the date of the special election. In addition, the prohibition does not apply to a contribution made to an incumbent who is subject to a recall election beginning on the date on which a petitioner registers an intent to circulate a petition for a recall election against the incumbent and ending on the date of the recall election, except that if the circulation period expires without offering of the recall petition for filing, the filing officer determines not to file the petition, or the incumbent resigns, the period ends on the date of that event. Currently, there is no such prohibition.

Violators are subject to a forfeiture (civil penalty) of treble the amount or value of any unlawful contribution. Intentional violators are guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months or both.

Representation by former state officials

Currently, with certain exceptions, no former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of anyone other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the department or agency with which he or she was associated as a state public official during the 12 months preceding the official's departure from state service.

ASSEMBLY BILL 1212

Additional restrictions apply with respect to matters in which a former state public official was involved while serving as a state public official.

This bill provides, in addition, that no former governor or state public official who was appointed to his or her position by the governor, for 12 months following the date on which he or she ceases to occupy the office of governor or the position to which he or she was appointed by the governor may, for compensation, on behalf of anyone other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee in the executive branch of state government.

Service by former legislators and certain legislative employees as lobbyists

This bill prohibits any individual who serves as a member or employee of the legislature, except a nonpartisan employee, for 12 months following the date on which the individual ceases to hold his or her office or position, from being employed as a lobbyist for the purpose of attempting to influence state legislative action. A “lobbyist” means an individual who is compensated by a principal and whose duties include lobbying on behalf of the principal, except that an individual whose duties on behalf of a principal are not limited exclusively to lobbying is a “lobbyist” only if the individual makes lobbying communications on each of at least five days during a six-month reporting period.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment for not more than one year or both for each violation.

→ No Space
Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 8.35 (4) (b) of the statutes is amended to read:

2 8.35 (4) (b) Notwithstanding par. (a), any unspent and unencumbered moneys
3 received by a candidate from the Wisconsin election campaign fund shall be
4 immediately transferred to any candidate who is appointed to replace such
5 candidate, upon filing of a proper application therefor under s. 11.50 (2). If there is
6 no candidate appointed or if no proper application is filed within 7 days of the date

ASSEMBLY BILL 1212

on which the vacancy occurs, such moneys shall revert to the state as provided in s. 11.50 (8). Notwithstanding par. (a), any unspent and unencumbered moneys received by a candidate from the democracy trust fund shall be immediately transferred to any candidate who is appointed to replace that candidate upon filing of a proper application therefor under s. 11.502 (1). For purposes of qualification, contributions received and disbursements made by the former candidate are considered to have been received or made by the replacement candidate. If there is no candidate appointed or if no proper application is filed within 7 days of the date on which a vacancy occurs, the moneys shall revert to the state.

SECTION 2. 11.01 (14m) of the statutes is created to read:

11.01 (14m) "Partisan state office" means the office of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state senator, state representative to the assembly, or district attorney.

SECTION 3. 11.12 (2) of the statutes, as affected by 2005 Wisconsin Act 177, is amended to read:

11.12 (2) Any No registrant, except a candidate who receives a public financing benefit from the democracy trust fund, may accept an anonymous contribution exceeding \$10 received by a campaign or committee treasurer or by an individual under s. 11.06 (7) may not be used or expended. The. No candidate who receives a public financing benefit from the democracy trust fund may accept an anonymous contribution exceeding \$5. Any anonymous contribution that may not be accepted under this subsection shall be donated to the common school fund or to any a charitable organization at the option of the registrant's treasurer.

SECTION 4. 11.16 (2) of the statutes, as affected by 2005 Wisconsin Act 177, is amended to read:

ASSEMBLY BILL 1212

SECTION 4

1 11.16 (2) LIMITATION ON CASH CONTRIBUTIONS. ~~Every~~ [✓] Except as provided in s.
2 11.506 (6), every contribution of money exceeding \$50 shall be made by negotiable
3 instrument or evidenced by an itemized credit card receipt bearing on the face the
4 name of the remitter. No treasurer may accept a contribution made in violation of
5 this subsection. The treasurer shall promptly return the contribution, or donate it
6 to the common school fund or to a charitable organization in the event that the donor
7 cannot be identified.

8 **SECTION 5.** 11.16 (3) of the statutes is amended to read:

9 11.16 (3) FORM OF DISBURSEMENTS. ~~Every~~ [✓] Except as authorized under s. 11.511
10 (1), every disbursement which is made by a registered individual or treasurer from
11 the campaign depository account shall be made by negotiable instrument. Such
12 instrument shall bear on the face the full name of the candidate, committee,
13 individual or group as it appears on the registration statement filed under s. 11.05
14 and where necessary, such additional words as are sufficient to clearly indicate the
15 political nature of the registrant or account of the registrant. The name of a political
16 party shall include the word "party". The instrument of each committee registered
17 with the board and designated under s. 11.05 (3) (c) as a special interest committee
18 shall bear the identification number assigned under s. 11.21 (12) on the face of the
19 instrument.

20 **SECTION 6.** 11.24 (4m) of the statutes is created to read:

21 11.24 (4m) (a) ~~Except as provided in par. (c), no person may make a contribution~~
22 to an incumbent partisan elective state official or to a candidate for a partisan state
23 office, or to the personal campaign committee or support committee authorized
24 under s. 11.05 (3) (p) of such an official or candidate during the period beginning on

ASSEMBLY BILL 1212

SECTION 6

1 the date of introduction of the executive budget bill under s. 16.47 (1m) and ending
2 on the date of enactment of the biennial budget act.

3 (b) If in any year there is more than one executive budget bill, par. (a) applies
4 beginning on the date of introduction of the first such bill and ending on the date of
5 enactment of the last such bill.

6 (c) Paragraph (a) does not apply to an individual who is a candidate for state
7 office at a special election, or to the personal campaign or authorized support
8 committee of such a candidate, during the period beginning on the date that the
9 special election is ordered and ending on the date of the special election.

10 (d) Notwithstanding par. (a), a person may make a contribution to an
11 incumbent partisan elective state official against whom a recall petition is circulated
12 during the period beginning on the date that a petitioner registers an intent to
13 circulate a petition under s. 9.10 (2) (d) and ending on the date of the recall election,
14 except that if the circulation period expires without offering of the recall petition for
15 filing, the filing officer determines not to file the petition, or the official resigns at an
16 earlier date under s. 9.10 (3) (c), the period ends on the date of that event.

17 **SECTION 7.** 11.26 (1) (a) of the statutes is amended to read:

18 11.26 (1) (a) Candidates for governor, lieutenant governor, secretary of state,
19 state treasurer, attorney general, or state superintendent [✓] ~~or justice~~, \$10,000.

20 **SECTION 8.** 11.26 (1) (am) of the statutes is created to read:

21 11.26 (1) (am) Candidates for justice, [✓] ~~or justice~~, \$1,000.

22 **SECTION 9.** 11.26 (2) (a) of the statutes, ~~as affected by 2005 Wisconsin Act 177,~~
23 is amended to read:

ASSEMBLY BILL 1212

SECTION 9

1 11.26 (2) (a) Candidates for governor, lieutenant governor, secretary of state,
2 state treasurer, attorney general, or state superintendent ~~or justice~~✓, 4 percent of the
3 value of the disbursement level specified in the schedule under s. 11.31 (1).

4 SECTION 10. 11.26 (2) (an) of the statutes is created to read:

5 11.26 (2) (an) Candidates for justice✓, \$1,000.✓

6 SECTION 11. 11.26 (9) (a) of the statutes, ~~as affected by 2005 Wisconsin Act 177,~~
7 is amended to read:

8 11.26 (9) (a) ~~No~~ Except as provided in par. (ba).✓ ~~no~~ individual who is a candidate
9 for state or local office may receive and accept more than 65 percent of the value of
10 the total disbursement level determined under s. 11.31 for the office for which he or
11 she is a candidate during any primary and election campaign combined from all
12 committees subject to a filing requirement, including political party and legislative
13 campaign committees.

14 SECTION 12. 11.26 (9) (b) of the statutes, ~~as affected by 2005 Wisconsin Act 177,~~
15 is amended to read:

16 11.26 (9) (b) ~~No~~ Except as provided in par. (ba).✓ ~~no~~ individual who is a candidate
17 for state or local office may receive and accept more than 45 percent of the value of
18 the total disbursement level determined under s. 11.31 for the office for which he or
19 she is a candidate during any primary and election campaign combined from all
20 committees other than political party and legislative campaign committees subject
21 to a filing requirement.

22 SECTION 13. 11.26 (9) (ba) of the statutes is created to read:

23 11.26 (9) (ba) Paragraphs (a)✓ and (b)✓ do not apply to a candidate who receives
24 a public financing benefit from the democracy trust fund.

25 SECTION 14. 11.26 (13) of the statutes is amended to read:

ASSEMBLY BILL 1212

1 11.26 (13) Except as provided in sub. (9), contributions received from the
2 Wisconsin election campaign fund and public financing benefits received from the
3 democracy trust fund are not subject to limitation by this section.

4 **SECTION 15.** 11.31 (1) (d) of the statutes, ~~as affected by 2005 Wisconsin Act 177,~~
5 is amended to read:

6 11.31 (1) (d) Candidates for secretary of state, state treasurer, ~~justice~~ [✓] or state
7 superintendent, \$215,625.

8 **SECTION 16.** 11.50 (1) (a) 1. of the statutes, ~~as affected by 2005 Wisconsin Act~~
9 ~~177,~~ is amended to read:

10 11.50 (1) (a) 1. With respect to a spring or general election, any individual who
11 is certified under s. 7.08 (2) (a) as a candidate in the spring election for ~~justice~~ [✓] or state
12 superintendent, or an individual who receives at least 6% of the vote cast for all
13 candidates on all ballots for any state office, except district attorney, for which the
14 individual is a candidate at the September primary and who is certified under s. 7.08
15 (2) (a) as a candidate for that office in the general election, or an individual who has
16 been lawfully appointed and certified to replace either such individual on the ballot
17 at the spring or general election; and who has qualified for a grant under sub. (2).

18 **SECTION 17.** 11.50 (3) (a) 2. of the statutes, ~~as created by 2005 Wisconsin Act~~
19 ~~177,~~ is repealed.

20 **SECTION 18.** 11.50 (3) (b) of the statutes, ~~as created by 2005 Wisconsin Act 177,~~
21 is amended to read:

22 11.50 (3) (b) If a vacancy occurs in the office of state superintendent or ~~justice~~ [✓]
23 after August 15 in any year and an election is scheduled to fill the vacancy at the
24 spring election in the following year, the state treasurer shall transfer an amount not
25 exceeding 8 percent of the moneys transferred to the fund on the preceding August

ASSEMBLY BILL 1212

SECTION 18

1 15 to the superintendency account ~~for the office in which the vacancy occurs~~, such
2 moneys to be drawn from any account within the accounts created under sub. (4) in
3 the amount or amounts specified by the board.

4 **SECTION 19.** 11.501[✓] to 11.522[✓] of the statutes are created to read:

5 **11.501 Definitions.** In ss. 11.501[✓] to 11.522[✓]:

6 (1) “Allowable contribution” means a qualifying contribution, seed money
7 contribution, or personal contribution authorized under ss. 11.502[✓] to 11.522[✓].

8 (2) “Campaign” has the meaning given in s. 11.26 (17).

9 (3) “Election campaign period” means the period beginning on the day after the
10 spring primary election or the day on which a primary election would be held, if
11 required, and ending on the day of the succeeding spring election.

12 (4) “Eligible candidate” means a candidate for the office of justice who has an
13 opponent who has qualified to have his or her name certified for placement on the
14 ballot at the spring primary or election and who qualifies for public financing by
15 collecting the required number of qualifying contributions, making all required
16 reports and disclosures, and being certified by the board as being in compliance with
17 ss. 11.502[✓] to 11.522[✓].

18 (5) “Excess disbursement amount” means the amount of disbursements made
19 by a nonparticipating candidate in excess of the public financing benefit available to
20 an eligible candidate for the same office that the nonparticipating candidate seeks.

21 (6) “Excess qualifying contribution amount” means the amount of qualifying
22 contributions accepted by a candidate beyond the number or dollar amount of
23 contributions required to qualify a candidate for a public financing benefit.

ASSEMBLY BILL 1212

1 **(7)** “Exploratory period” means the period that begins after the date of a spring
2 election and ends on the first day of the public financing qualifying period for the next
3 election for justice.

4 **(9)** “Immediate family,” when used with reference to a candidate, includes the
5 candidate’s spouse and children.

6 **(10)** “Independent disbursement” means a disbursement by a person expressly
7 advocating the election or defeat of a clearly identified candidate which is made
8 without cooperation or consultation with a candidate, or any authorized committee
9 or agent of a candidate, and which is not made in concert with, or at the request or
10 suggestion of, any candidate, or any authorized committee or agent of a candidate.

11 **(11)** “Nonparticipating candidate” means a candidate for the office of justice
12 who does not apply for a public financing benefit or who is otherwise ineligible or fails
13 to qualify for a public financing benefit under ss. 11.502 to 11.522.

14 **(12)** “Personal funds” means funds contributed by a candidate or a member of
15 a candidate’s immediate family.

16 **(13)** “Primary election campaign period” means the period beginning on the
17 day after the last day prescribed by law for filing nomination papers for that office
18 and ending on the day of the spring primary election for that office or the day on
19 which the primary election would be held, if required.

20 **(14)** “Public financing qualifying period” means the period beginning on the
21 first day of July of any year and ending on the day before the beginning of the primary
22 election campaign period for that office.

23 **(15)** “Qualifying contribution” means a contribution made to a candidate by an
24 elector of this state during the public financing qualifying period, which is
25 acknowledged by written receipt identifying the contributor.

ASSEMBLY BILL 1212

SECTION 19

1 (16) "Seed money contribution" means a contribution in an amount of not more
2 than \$100 made to a candidate by an elector of the jurisdiction or district in which
3 the candidate seeks office during the exploratory period or the public financing
4 qualifying period, or a contribution made to a candidate consisting of personal funds
5 of that candidate in an amount not more than the amount authorized under s. 11.507
6 during the exploratory period or the public financing qualifying period.

7 **11.502 Qualification; certification.** (1) Before a candidate for justice in the
8 primary election may be certified as an eligible candidate to receive a public
9 financing benefit for the primary election campaign period, the candidate shall apply
10 to the board for a public financing benefit and file a sworn statement that the
11 candidate has complied and will comply with all requirements of this section and ss.
12 11.503 to 11.522 throughout the applicable campaign, which includes the primary
13 and election for that office. A candidate shall file the application and statement no
14 later than the beginning of the primary election campaign period for the office that
15 the candidate seeks.

16 (2) A candidate shall be certified by the board as an eligible candidate for
17 receipt of public financing for a primary election if the candidate complies with sub.
18 (1) and receives at least 1,000 qualifying contributions in amounts equal to not less
19 than \$5 nor more than \$100 and in an aggregate amount of not less than \$5,000 nor
20 more than \$15,000 before the close of the public financing qualifying period.

21 (3) The board shall verify a candidate's compliance with the requirements of
22 sub. (2) by such verification and sampling techniques as the board considers
23 appropriate.

24 (4) Each candidate shall:

ASSEMBLY BILL 1212

1 (a) Acknowledge each qualifying contribution by a receipt to the contributor
2 which contains the contributor's name and home address.

3 (b) No later than the 15th or the last day of the month which immediately
4 follows the date of receipt of a qualifying contribution, whichever comes first, file a
5 copy of the receipt under par. (a) with the board, except that during July, August, and
6 September a copy need only be filed on the last day of the month.

7 (5) A qualifying contribution may be utilized only for the purpose of making
8 a disbursement authorized by law.

9 **11.503 Time of application.** (1) Before a candidate may be certified as
10 eligible for receipt of public financing for a spring election, the candidate shall apply
11 to the board and file a sworn statement that the candidate has fulfilled all the
12 requirements of ss. 11.502 to 11.522 during the primary election campaign period
13 and will comply with such requirements during the election campaign period.
14 Except as authorized in s. 8.35 (4) (b), the application shall be filed no later than the
15 7th day after the date of the spring primary election or the day on which the primary
16 election would be held if a primary were required.

17 (2) The board shall certify a candidate as an eligible candidate for receipt of
18 public financing for a spring election if the candidate complies with sub. (1) and the
19 candidate was an eligible candidate during the primary election campaign period.

20 **11.505 Agreement by candidate.** An eligible candidate who accepts a public
21 financing benefit under ss. 11.502 to 11.522 during the primary election campaign
22 period shall agree to comply with all requirements of ss. 11.502 to 11.522 throughout
23 the election campaign period during the same campaign as a precondition to receipt
24 of public financing. An eligible candidate who accepts a public financing benefit
25 during a primary election campaign period may not elect to accept private

ASSEMBLY BILL 1212

SECTION 19

✓ ✓
1 contributions in violation of ss. 11.502 to 11.522 during the corresponding election
2 campaign period.

3 **11.506 Requirements imposed upon candidates.** (1) An eligible
4 candidate may not accept private contributions other than seed money contributions
5 and qualifying contributions that the candidate accepts during the exploratory
6 period and the public financing qualifying period.

7 (2) In addition to reports required to be filed under ss. 11.12 (5) and 11.20, a
8 candidate who receives a public financing benefit shall furnish complete financial
9 records, including records of seed money contributions, qualifying contributions, and
10 disbursements, to the board on the 15th or the last day of the month that
11 immediately follows the receipt of the contribution or the making of the
12 disbursement, whichever comes first, except that during July, August, and
13 September records need only be furnished on the last day of the month. Each such
14 candidate shall cooperate with any audit or examination by the board.

15 (3) In addition to adhering to requirements imposed under ss. 11.06 (5) and
16 11.12 (3), a candidate who receives a public financing benefit shall maintain records
17 of all contributions received by the candidate of more than \$5 but less than \$50,
18 including seed money contributions and qualifying contributions, which shall
19 contain the full name of the contributor and the contributor's full home address. In
20 addition, if a contributor's aggregate contributions to any candidate exceed \$50 for
21 any campaign, the candidate shall also maintain a record of the contributor's
22 principal occupation and the name and business address of the contributor's place
23 of employment.

24 (4) The failure to record or provide the information specified in sub. (3)
25 disqualifies a contribution from counting as a qualifying contribution.

ASSEMBLY BILL 1212

1 (5) No eligible candidate and no person acting on a candidate's behalf may
2 deposit any contribution that is not recorded in accordance with sub. (3) in a
3 candidate's campaign depository account.

4 (6) No eligible candidate may accept more than \$25 in cash from any
5 contributor and no such candidate may accept cash from all sources in a total amount
6 greater than one-tenth of 1 percent of the public financing benefit for the office that
7 the candidate seeks or \$500, whichever is greater.

8 **11.507 Personal funds of candidates.** (1) The personal funds of a candidate
9 contributed as seed money contributions may not exceed an aggregate amount of
10 \$5,000.

11 (2) No eligible candidate may make any disbursement derived from personal
12 funds after the close of the public financing qualifying period.

13 **11.508 Seed money contributions.** (1) An eligible candidate may accept
14 seed money contributions from any individual or committee prior to the end of the
15 public financing qualifying period, provided the total contributions received from one
16 contributor, except personal funds and qualifying contributions otherwise permitted
17 under ss. 11.502 to 11.522, do not exceed \$100, and the aggregate contributions,
18 including personal funds, but not including qualifying contributions, do not exceed
19 \$5,000.

20 (2) An eligible candidate may make disbursements derived from seed money
21 contributions only during the exploratory period and the public financing qualifying
22 period.

23 **11.509 Excess contributions.** If an eligible candidate receives excess seed
24 money contributions or qualifying contributions on an aggregate basis, the
25 candidate may retain the contributions and make disbursements derived from the

ASSEMBLY BILL 1212

SECTION 19

✓
1 contributions, in an amount not exceeding \$15,000. An amount equivalent to the
2 excess contributions shall be deducted by the board from the candidate's public
3 financing benefit. A candidate shall return to the board all seed money and
4 qualifying contributions that exceed the limits prescribed in this section within 48
5 hours after the end of the exploratory period. The board shall deposit all
6 contributions returned under this section in the democracy trust fund. ✓

7 **11.51 Certification by candidate. (1)** To apply for a public financing benefit,
8 a candidate shall certify to the board that the candidate has complied and will
9 comply, throughout the applicable campaign, with all requirements of ss. 11.502 to
10 11.522 and that all disclosures required as of the time of application have been made,
11 and shall present evidence of the requisite number of qualifying contributions
12 received by the candidate. The candidate's request for certification shall be signed
13 by the candidate and the candidate's campaign treasurer.

14 **(2)** The board shall distribute to each eligible candidate at the spring primary
15 election a check for the amount of the public financing benefit payable to the
16 candidate promptly after the candidate demonstrates his or her eligibility and, in
17 any event, not later than 5 days after the end of the public financing qualifying
18 period; however, no candidate may utilize a check received under this subsection
19 until the beginning of the primary election campaign period. ✓

20 **(3)** The board shall distribute to each eligible candidate for justice at a spring
21 election a check for the amount of the public financing benefit payable to the
22 candidate not later than 48 hours after the date of the spring primary election for the
23 office of justice, or the date that the primary election would be held if a primary were
24 required. However, no candidate for a particular office shall receive a check until all

ASSEMBLY BILL 1212

1 candidates for the office of justice who apply and qualify for a public financing benefit
2 have been certified as eligible candidates.

3 (4) If any candidate who receives a public financing benefit violates the
4 requirements of ss. 11.502 to 11.522, the board shall require the candidate to repay
5 all public funds received by the candidate to the board. The board shall deposit all
6 repayments received under this subsection in the democracy trust fund.

7 **11.511 Public financing benefits.** (1) The board shall provide to each
8 eligible candidate who qualifies to receive a public financing benefit for the primary
9 or election campaign period separate checks for the public financing benefits payable
10 to the candidate for the primary and election campaign periods in the amounts
11 specified in this section, subject to any required adjustment under s. 11.509, 11.512
12 (2) or 11.513 (2). An eligible candidate may use this public financing benefit to
13 finance any lawful disbursements during the primary and election campaign periods
14 to further the election of the candidate in that primary or election. An eligible
15 candidate may not use this public financing benefit to repay any loan, or in violation
16 of ss. 11.502 to 11.522 or any other applicable law.

17 (2) Except as provided in ss. 11.512 (2) and 11.513 (2), the public financing
18 benefit for a primary election campaign period is \$100,000.

19 (3) Except as provided in ss. 11.512 (2) and 11.513 (2), the public financing
20 benefit for an election campaign period is \$300,000.

21 (4) If there is no spring primary election for the office of justice, no eligible
22 candidate may receive a public financing benefit for the primary election campaign
23 period.

24 (5g) An eligible candidate who receives a public financing benefit in the
25 primary election campaign period and whose name is certified to appear on the ballot

ASSEMBLY BILL 1212

SECTION 19

1 at the election following that primary may utilize any unencumbered balance of the
2 public financing benefit received by the candidate in the primary election campaign
3 period for the election campaign period.

4 (5r) Except as permitted in sub. (5g), an eligible candidate who receives a
5 public financing benefit and who does not encumber or expend some portion of the
6 benefit for a purpose described in sub. (1) shall return any unencumbered portion of
7 the benefit to the board within 30 days after the primary or election in which the
8 candidate participates.

9 (6) Notwithstanding subs. (2) and (3), beginning on July 1, 2010, and every 2
10 years thereafter, the board shall modify the public financing benefits provided for in
11 subs. (2) and (3) to adjust for the change in the consumer price index, all items, U.S.
12 city average, published by the U.S. department of labor for the preceding 2-year
13 period ending on December 31.

14 **11.512 Financial activity by nonparticipating candidates.** (1) In
15 addition to other reports required by law, a nonparticipating candidate for an office
16 at a primary or election who receives contributions or makes or obligates to make
17 disbursements in an amount more than 5 percent greater than the public financing
18 benefit applicable to an eligible candidate for the same office at the same primary or
19 election shall file a report with the board itemizing the total contributions received
20 and disbursements made or obligated to be made by the candidate as of the date of
21 the report. The board shall transmit copies of the report to all candidates for the
22 same office at the same election. A nonparticipating candidate shall file additional
23 reports after the candidate receives each additional \$1,000 of contributions, or the
24 candidate makes or obligates to make each additional \$1,000 of disbursements. If
25 such contributions are received or such disbursements are made or obligated to be

ASSEMBLY BILL 1212

1 made more than 6 weeks prior to the date of the primary election at which the name
2 of the candidate appears on the ballot, or prior to the date that the primary election
3 would be held, if a primary were required, such reports shall be made at the next
4 regular reporting interval under s. 11.506. If such contributions are received or such
5 disbursements made or obligated to be made within 6 weeks prior to the date of the
6 primary election at which the name of the candidate appears on the ballot, or within
7 6 weeks prior to the date that the primary election would be held, if a primary were
8 required, such reports shall be made within 24 hours after each instance in which
9 such contributions are received, or such disbursements are made or obligated to be
10 made.

11 (2) Upon receipt of such information, the state treasurer shall immediately
12 issue a check to an opposing eligible candidate in an additional amount equivalent
13 to the total excess disbursements made or obligated to be made, but not to exceed 3
14 times the public financing benefit for the applicable office.

15 **11.513 Independent disbursements.** (1) If any person makes, or becomes
16 obligated to make, by oral or written agreement, an independent disbursement in
17 excess of \$1,000 with respect to a candidate for the office of justice at a spring primary
18 or election, that person shall file with the board a notice of such disbursement or
19 obligation to make such a disbursement. Any such person shall file reports of such
20 disbursements or obligations to make such disbursements on the 15th or last day of
21 the month that immediately follows the date of the disbursement or the obligation
22 to make the disbursement, whichever comes first, except that, within 6 weeks prior
23 to the date of the spring primary election, the person shall file such reports within
24 24 hours after each independent disbursement is made or obligated to be made. Any

1 such person shall file additional reports after each additional \$1,000 of
2 disbursements are made or obligated to be made.

3 (2) When the aggregate independent disbursements against an eligible
4 candidate for an office or for the opponents of that candidate exceed 20 percent of the
5 public financing benefit for that office in any campaign, the board shall immediately
6 credit that candidate's account with an additional line of credit equivalent to the total
7 disbursements made or obligated to be made, but not to exceed 3 times the public
8 financing benefit for the applicable office.

9 **11.515 Democracy trust fund.** The democracy trust fund shall be
10 administered by the state treasurer.

11 **11.516 Administration.** Except as otherwise specifically provided in ss.
12 11.501 to 11.522, the duties of and authority for administering and enforcing ss.
13 11.501 to 11.522 are vested in the board.

14 **11.517 Penalties; enforcement.** (1) *Notwithstanding s. 11.60(1), if* If an eligible candidate makes
15 disbursements that exceed the total amount of the public financing benefit allocated
16 to the candidate for any campaign and the total qualifying and seed money
17 contributions lawfully accepted by the candidate, the candidate may be required to
18 forfeit not more than 10 times the amount by which the disbursements exceed the
19 allocation.

20 *Notwithstanding s. 11.60(1), any* (2) Any eligible candidate who accepts contributions in excess of any limitation
21 imposed under ss. 11.502 to 11.522 may be required to forfeit not more than 10 times
22 the amount by which the contributions exceed the applicable limitation.

23 (3) If the board finds that there is probable cause to believe that a candidate
24 has made excess disbursements or has accepted excess contributions contrary to sub.
25 (1) or (2), the board shall attempt for a period of not more than 14 days after its

ASSEMBLY BILL 1212

1 finding to correct the matter by informal methods of conference and conciliation and
2 to enter into a settlement and conciliation agreement under s. 5.05 (1) (c) with the
3 person involved. A settlement and conciliation agreement made pursuant to this
4 subsection shall be a matter of public record. Unless violated, a settlement and
5 conciliation agreement is a bar to any civil action under sub. (4).

6 (4) If the board has probable cause to believe that a candidate has made excess
7 disbursements or has accepted excess contributions and the board is unable to
8 correct the matter by informal methods within the time prescribed in sub. (3), the
9 board shall make a public finding of probable cause in the matter. After making a
10 public finding, the board shall bring an action in the circuit court for Dane County
11 to impose a forfeiture under sub. (1) or (2).
may bring a civil action against the candidate as provided in s. 5.05 (1) (c).

12 (5) If an elector believes that a candidate has violated ss. 11.502 to 11.522 and
13 the elector is entitled to vote for or against the candidate in the election in connection
14 with which the violation is alleged to occur, the elector may file a complaint with the
15 board requesting it to take remedial action. If the board refuses to take remedial
16 action or, within 30 days after the filing of such a complaint, fails to take remedial
17 action, the elector may commence a civil action in the appropriate circuit court under
18 sub. (4) requesting the court to impose a forfeiture under sub. (1) or (2).
requesting the court to impose a forfeiture under sub. (1) or (2) for the county where the board is authorized to bring an action under s. 5.05 (1) (c).

19 (6) The board and courts shall expedite all proceedings under ss. 11.502 to
20 11.522 so that all complaints brought prior to an election are resolved, to the extent
21 possible, before the election is held.

22 (7) If a complaint brought under ss. 11.502 to 11.522 is resolved against the
23 complainant and is found to have been brought in bad faith and without reasonable
24 basis therefor, the board or court may assess costs, including reasonable attorney
25 fees, against the complainant.

ASSEMBLY BILL 1212

SECTION 19

11.518 Prohibited acts. (1)

No to this standing s. 11.6(1)(c) if
(1) If a candidate or agent of a candidate knowingly
accepts more contributions than the candidate is entitled to receive, or makes
disbursements exceeding the total amount of the public financing benefit received
by the candidate and the qualifying and seed money contributions lawfully received
by the candidate, the candidate or agent, *is guilty of a class G felony*
~~may be fined not more than \$25,000 or~~
~~imprisoned for not more than 5 years or both.~~

(2) No to this standing s. 11.6(1)(c), if
(3) If, in connection with the receipt or disbursement of a public financing
benefit for an election campaign, any person knowingly provides false information
to the board, or knowingly conceals or withholds information from the board, that
person *is guilty of a class G felony*
~~may be fined not more than \$25,000 or imprisoned for not more than 5 years~~
~~or both.~~

11.522 Contributions to nonparticipating candidates; attributions. (1)

(1) A
(1) A nonparticipating candidate may accept contributions from private sources without
limitation, except that no person may make any contribution or contributions to a
nonparticipating candidate exceeding a total of \$1,000 during any campaign.

In addition to the attribution required under s. 11.30(2),
(2) Any electronic or print communication paid for or authorized by a
nonparticipating candidate shall contain the following sentence: "This
communication is paid for with money raised from private sources. This candidate
has not agreed to abide by campaign contribution and spending limits."

SECTION 20. 19.45 (8) (d) of the statutes is created to read:

19.45 (8) (d) No former governor or former state public official who was
appointed to his or her state public office by the governor, for 12 months following the
date on which he or she ceases to occupy the office of governor or the position to which
he or she was appointed by the governor, may for compensation, on behalf of any
person other than a governmental entity, make any formal or informal appearance

ASSEMBLY BILL 1212

before, or negotiate with, any employee of a department in the executive branch of state government.

SECTION 21. 19.45 (8m) of the statutes is created to read:

19.45 (8m) No individual who serves as a member of the legislature or an employee of the legislature identified in s. 20.923 (6) (h), for 12 months following the date on which the individual ceases to hold his or her office or position, may be employed as a lobbyist, as defined in s. 13.62 (11), for the purpose of attempting to influence legislative action.

SECTION 22. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

20.511 Government accountability
20.510 Elections board

2007-08 2008-09
2005-06 2006-07

(1) ADMINISTRATION OF ELECTION AND CAMPAIGN LAWS

(r) Democracy trust fund administration

SEG A -0- -0-

20.585 Treasurer, state

(1) CUSTODIAN OF STATE FUNDS

(r) Democracy trust fund administration

20.511
20.510
SEG A -0- -0-

SECTION 23. 20.510 (1) (r) of the statutes is created to read:

20.510 (1) (r) Democracy trust fund administration. From the democracy trust fund, the amounts in the schedule for the administration of ss. 11.501 to 11.522.

SECTION 24. 20.585 (1) (q) of the statutes is created to read:

ASSEMBLY BILL 1212

SECTION 24

1 20.585 (1) (q) *Public financing benefits; candidates for justice.* From the
 2 democracy trust fund, a sum sufficient to provide for payment of public financing
 3 benefits to eligible candidates under ss. 11.501 to 11.522.

4 **SECTION 25.** 20.585 (1) (r) of the statutes is created to read:

5 20.585 (1) (r) *Democracy trust fund administration.* From the democracy trust
 6 fund, the amounts in the schedule for the administration of ss. 11.501 to 11.522.

7 **SECTION 26.** 20.855 (4) (bb) of the statutes is created to read:

8 20.855 (4) (bb) *Democracy trust fund transfer.* A sum sufficient equal to the
 9 amounts appropriated under ss. 20.510 (1) (r) and 20.585 (1) (r) and the amounts
 10 required to provide public financing benefits that candidates qualify to receive from
 11 the democracy trust fund, to be transferred from the general fund to the democracy
 12 trust fund no later than the time required to make payments of grants under s. 11.51
 13 (2) and (3).

14 **SECTION 27.** 25.17 (1) (cm) of the statutes is created to read:

15 25.17 (1) (cm) Democracy trust fund (s. 25.421);

16 **SECTION 28.** 25.421 of the statutes is created to read:

17 **25.421 Democracy trust fund.** All moneys appropriated under s. 20.855 (4)
 18 (bb) and all moneys deposited in the state treasury under ss. 11.509, 11.51 (4) and
 19 11.511 (5r) constitute the democracy trust fund, to be expended for the purposes of
 ss. 11.501 to 11.522.

~~Text as amended~~
 SECTION 28 Effective date. This act takes effect on December 1
 following the date of publication, except as follows: #
 (1) The treatment of sections 11.60(4) and 11.61(2) of the
 statutes take effect on December 1 following the date of publication
 or on the initiation date specified in 2007 Wisconsin Act 1,
 section 209(1), whichever is later.
 D-Note

(End)

INS 2A:

The bill provides that if a candidate makes disbursements that exceed the total amount of the public financing benefit allocated to the candidate and the total qualifying and seed money contributions lawfully accepted by the candidate, the candidate is subject to a forfeiture (civil penalty) of not more than 10 times the amount by which his or her disbursements exceed the allocation. In addition, the bill provides that a candidate who accepts contributions in excess of any limitation imposed under the bill is subject to a forfeiture of not more than 10 times the amount by which the contributions exceed the applicable limitation. The bill also provides that if any candidate or agent of a candidate knowingly accepts more contributions than the candidate is entitled to receive, or makes disbursements exceeding the total amount of the public financing benefit received by the candidate and the qualifying and seed money contributions lawfully received by the candidate, the candidate or agent may be fined not more than \$25,000 or imprisoned for not more than 10 years, or both. Under the bill, any person who, in connection with the receipt or disbursement of a public financing benefit, knowingly provides false information to the Government Accountability Board, or knowingly conceals or withholds information from the board, is subject to the same penalty.

INS 23-8:

SECTION 1. 11.60 (4) of the statutes, as affected by 2007 Wisconsin Act 1, is amended to read:

11.60 (4) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (h), 5.08, and 5.081, actions under this section or 11.517 may be brought by the board or by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

NOTE: NOTE: Sub. (4) is shown as amended by 2007 Wis. Act 1 eff. the initiation date as set forth in section 209 (1) of that Act. Prior to that date it reads: NOTE: (4) Actions under this section arising out of an election for state office or a statewide referendum may be brought by the board or by the district attorney of the county where the violation is alleged to have occurred, except as specified in s. 11.38. Actions under this section arising out of an election for local office or a local referendum may be brought by the district attorney of the county where the violation is alleged to have occurred. Actions under this section arising out of an election

for county office or a county referendum may be brought by the county board of election commissioners of the county wherein the violation is alleged to have occurred. If a violation concerns a district attorney or circuit judge or candidate for such offices, the action shall be brought by the attorney general. If a violation concerns the attorney general or a candidate for such office, the governor may appoint special counsel under s. 14.11 (2) to bring suit in behalf of the state. The counsel shall be independent of the attorney general and need not be a state employee at the time of appointment.

History: 1973 c. 334; 1977 c. 449; 1979 c. 328; 1985 a. 303; 1997 a. 27, 230; 1999 a. 182; 2001 a. 109; 2003 a. 321; 2005 a. 177; 2007 a. 1.

SECTION 2. 11.61 (2) of the statutes, as affected by 2007 Wisconsin Act 1, is

amended to read:

11.61 (2) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (i), 5.08, and 5.081, all prosecutions under this section or s. 11.518 shall be conducted by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

NOTE: NOTE: Sub. (2) is shown as amended by 2007 Wis. Act 1 eff. the initiation date as set forth in section 209 (1) of that Act. Prior to that date it reads:NOTE:

(2) Except as provided in s. 11.38 (5), all prosecutions under this section shall be conducted by the district attorney of the county where the violation is alleged to have occurred. If the district attorney refuses to act upon a sworn complaint, or fails to act upon such a complaint within 60 days of the date on which the complaint is received, the attorney general may then conduct the prosecution under this section. If a violation concerns a district attorney or circuit judge or candidate for such offices, the prosecution shall be conducted by the attorney general. If a violation concerns the attorney general or a candidate for such office, the governor may appoint a special prosecutor under s. 14.11 (2) to conduct the prosecution in behalf of the state. The prosecutor shall be independent of the attorney general and need not be a state employee at the time of appointment.

History: 1973 c. 334; 1975 c. 93 ss. 117, 119 (1); 1977 c. 449; 1979 c. 328; 1983 a. 484; 1985 a. 303; 1997 a. 283; 2001 a. 109; 2005 a. 177; 2007 a. 1.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4240/1dn

JTK:kjf:m

January 17, 2006

Date

Representative Kreuser:

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.
Amy Kasper.

2007-08 and 2008-09

1. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years ~~2005-06~~ and ~~2006-07~~. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.
2. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.
3. ~~Some courts have held that~~ ^{The lower federal courts have disagreed as to whether} statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. ~~It should be noted that there are viable arguments to be made on both sides of this issue, this case is not binding in Wisconsin because it did not arise in the circuit that includes Wisconsin and the U.S. Supreme Court has not yet spoken on this issue.~~
4. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public

See also (I) *Daggett v. Comm. on Governmental Ethics and Election Practices*, 205 F.3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment.

One
financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution. One lower federal court has held that such a provision does not contravene equal protection requirements. See *Assn. of American Physicians and Surgeons v. Brewer*, 363 F. Supp. 2d 1197 (D.C., Ariz., 2005). Once again, the U.S. Supreme Court has not ruled on this issue.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0970/1dn
JTK:kjf:pg

March 15, 2007

Representative Kreuser:

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.
2. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years 2007-08 and 2008-09. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.
3. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.
4. The lower federal courts have disagreed as to whether statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. See also *Daggett v. Comm. on Governmental, Ethics and Election*

Practices, 205 F. 3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment. The U.S. Supreme Court has not yet spoken on this issue.

5. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution. One lower federal court has held that such a provision does not contravene equal protection requirements. See *Assn. of American Physicians and Surgeons v. Brewer*, 363 F. supp. 2d 1197 (D.C., Ariz., 2005). Once again, the U.S. Supreme Court has not ruled on this issue.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Barman, Mike

From: Barman, Mike on behalf of LRB.Legal
Sent: Thursday, March 15, 2007 11:17 AM
To: Lundquist, Lisa
Subject: RE: Submitted: LRB 07-0970/1 Topic: Public financing of elections for justice?body=

Thanks Lisa ...

I will submit your early FE request to DOA.

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Lundquist, Lisa
Sent: Thursday, March 15, 2007 11:14 AM
To: LRB.Legal
Subject: Submitted: LRB 07-0970/1 Topic: Public financing of elections for justice?body=

We would like a fiscal estimate of this bill previous to introduction.

Thank you,

Lisa
Office of Rep. Kreuser
266-5504

Parisi, Lori

From: Lundquist, Lisa
Sent: Monday, March 19, 2007 12:10 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-0970/1 Topic: Public financing of elections for justice

Please Jacket LRB 07-0970/1 for the ASSEMBLY.

Memo

To: Representative **Kreuser**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2007 session draft.

LRB Number: 2007 LRB-0970

Version: “/1”

Fiscal Estimate Prepared By: (agency abbr.) ELB

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 03 / 27 / 2007

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

> **If redrafted ...** please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.

> **If introduced ...** and the version of the attached fiscal estimate is for a **previous version ...** please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Christina) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

> **If introduced ...** and the version of the attached fiscal estimate is for the **current version ...** please write the draft's introduction number below and give to Mike (or Christina) to process.

THIS DRAFT WAS INTRODUCED AS: 2007 AB 250

Barman, Mike

From: Barman, Mike
Sent: Tuesday, March 27, 2007 2:31 PM
To: Rep.Kreuser
Cc: Lundquist, Lisa
Subject: LRB 07-0970/1 (un-introduced) (FE by ELB - attached - for your review)

Attachments: FE_Kreuser.PDF



FE_Kreuser.PDF
(454 KB)

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

LRB Correction

2007 Assembly Bill 250
(April 11, 2007)

Page 21, line 15: after "accountability" insert
"board".
(B)

(End)

LRB-0970/1ccc-1
KJF

ASSEMBLY BILL 250

1 natural person resides within a county if the person's principal place of operation is
2 located within that county.

3 **SECTION 20.** 11.61 (2) of the statutes, as affected by 2007 Wisconsin Act 1, is
4 amended to read:

5 11.61 (2) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (i),
6 5.08, and 5.081, all prosecutions under this section or s. 11.518 shall be conducted
7 by the district attorney for the county where the defendant resides or, if the
8 defendant is a nonresident, by the district attorney for the county where the violation
9 is alleged to have occurred. For purposes of this subsection, a person other than a
10 natural person resides within a county if the person's principal place of operation is
11 located within that county.

12 **SECTION 21.** 20.005 (3) (schedule) of the statutes: at the appropriate place,
13 insert the following amounts for the purposes indicated:

14 2007-08 2008-09

15 **20.511 Government accountability** *board*

16 (1) ADMINISTRATION OF ELECTION, ETHICS, AND
17 LOBBYING LAWS

18 (r) Democracy trust fund adminis-
19 tration

SEG A -0- -0-

20 **20.585 Treasurer, state**

21 (1) CUSTODIAN OF STATE FUNDS

22 (r) Democracy trust fund adminis-
23 tration

SEG A -0- -0-

24 **SECTION 22.** 20.511 (1) (r) of the statutes is created to read:



State of Wisconsin
2007-2008 LEGISLATURE

CORRECTIONS IN:

2007 ASSEMBLY BILL 250

Prepared by the Legislative Reference Bureau
(April 11, 2007)

1. Page 21, line 15: after "**accountability**" insert "**board**".

(END)